

IRDA

Committee on Policyholder Protection

**REPORT ON
THE INSTITUTION OF
INSURANCE OMBUDSMAN**

K.Sridhar
New No.7, Old No.8A,
Jeevan Ramayan Chandra Layout,
Chandran's Street, Guindy,
Chennai - 600 032

9th September, 2010

Dear Shri.Hari Narayan,

Re: Recommendations of the Committee on Intermediaries/Commissions, Rural and/or Social Sector Obligations/Policyholder Protection/Solatum fund/Grievance Management/Ombudsmen regarding the institution of the Insurance Ombudsman


In terms of your communication dated 2nd February, 2010 regarding formation of the **Committee on Intermediaries/Commissions, Rural and/or Social Sector Obligations/Policyholder Protection/Solatum fund/Grievance Management/Ombudsmen**, I, on behalf of the Committee, have pleasure in submitting the first part of the Committee's Report containing its recommendations pertaining to the institution of the Insurance Ombudsman. The report identifies the strengths and weaknesses of the present system of the Insurance Ombudsman, describes the areas needing modification and gives specific recommendations regarding them.

The Committee thanks Chairman, IRDA for the opportunity given to the Chairman and Members of the Committee to be involved in this exercise.

As the Terms of Reference (TOR) of the Committee covers other areas as well, the Committee shall be following this report up with another report containing recommendations regarding the rest of the areas, in due course.

With best regards

Yours sincerely,



(K.Sridhar)

Shri.J. Hari Narayan,
Chairman,
Insurance Regulatory and Development Authority,
Basheerbagh,
Hyderabad.

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2009-10

1. Background

- 1.1. The Insurance Regulatory and Development Authority (IRDA) constituted a committee to look into various aspects of policyholder protection -- Intermediaries/Commissions, Rural and/or Social Sector Obligations, Solatium Fund, Grievance Management, Ombudsmen and other Policyholder Protection issues, in February, 2010.
- 1.2. The Committee is chaired by Shri. K.Sridhar and has the following as its Members—Shri.Vijay Mahajan, Smt. Pushpa Girimaji, Shri. Deepak Satwalekar, Shri. M.Ramadoss, Shri. Venkatesh Mysore, Shri. Kamesh Goyal and Shri. Rajesh Sud. Smt.Yegnapriya Bharath from IRDA is the Member Secretary.
- 1.3. The Terms of Reference for the Committee include revisiting/review of the relevant Regulations, Guidelines etc issued by IRDA from time to time not only from the point of view of revisions that might be necessitated keeping the amendments proposed in the Insurance Laws (Amendment) Bill, 2008, but also other modifications that may be required.
- 1.4. The Committee has had six meetings so far and deliberated on the various issues within its remit.
- 1.5. The current report is the first part of the Committee's recommendations and covers the institution of the Insurance Ombudsman.

2. Introduction

- 2.1. The RPG Rules 1998 were framed by Central Government in terms of sub-section (1) of Section 114 of the Insurance Act 1938. Rule 3 deals with the Objects and states as follows: "The objects of these rules are to resolve all complaints relating to settlement of claim on the part of insurance companies in a cost-effective, efficient and impartial manner."
- 2.2. A complaint may be settled either through Mediation by the Ombudsman wherein the Ombudsman makes a Recommendation after an agreement is reached or by passing an Award. An Ombudsman may pass awards only in respect of complaints having a claims value of upto Rs. 20 lacs in respect of both Life and General Insurance.
- 2.3. As per Rule 13 (a), a complainant may approach the Ombudsman after a written representation has been rejected by the insurer or the complainant did not receive any reply within a period of one month after the insurer received the representation. The complainant has to approach the Ombudsman within one year of such rejection.
- 2.4. In case of Award, the Ombudsman shall pass the award within a period of three months from the receipt of the complaint.
- 2.5. The complainant gets one month time to accept the award of the Ombudsman. The award needs to be complied with by insurers within a period of 15 days of receipt of the acceptance letter from the complainant.
- 2.6. **Rule 12** describes the power of the Ombudsman and states that the Ombudsman may receive and consider (a). complaints under Rule 13, (b). any partial or total repudiation of claims by an insurer (c). any dispute in regard to premium paid or payable in terms of the policy (d). any dispute on the legal construction of the policies in so far as such disputes relate to claims (e). delay in settlement of claims; (f). non-issue of any insurance document to customers after receipt of premium.

Rule 13 (1) and (2) describe the manner in which an Ombudsman may receive a complaint (namely that a complainant shall give notice in writing giving the required details etc).

Rule 14 provides that if the Ombudsman deems fit, he may adopt a procedure of receiving complaints that is different from what is provided for in Rule 13 (1) and (2).

- 2.7. As per the existing practice which is based on the advice of GBIC, the Ombudsman receives and considers only personal lines complaints against all insurance companies, both life and general.
- 2.8. There are 12 Ombudsmen located in different parts of the country.
- 2.9. Currently governance of the institution of the Insurance Ombudsman is carried out by the Governing Body of Insurance Council (GBIC). The GBIC consists of one representative from each of the insurance companies. The representative shall ordinarily be Chairman or Managing Director or any one of the Directors of such company. The governing body shall formulate its own procedure for conducting its business including the election of the Chairman.
- 2.10. Further, the RPG Rules provide for an Advisory Committee which shall consist of not exceeding five eminent persons notified by the Government to assist IRDA to review the performance of the Ombudsmen from time to time. IRDA, after discussing matters with the governing body (GBIC) may recommend to the Government, appropriate proposals for effecting improvements in the functioning of Ombudsmen.
- 2.11. The Ombudsman shall furnish a report every year containing a general review of the activities carried out during the preceding financial year to the GBIC in respect of his centre. The GBIC in turn submits a consolidated Annual Report to IRDA.

3. Strengths of the present system

- 3.1. The institution of the Insurance Ombudsman has, since its implementation, offered an alternative dispute redress channel for aggrieved policyholders.
- 3.2. As per the statement of the GBIC, over the last several years the Ombudsman institution has dealt with nearly 80,000 complaints from all over the country giving relief of more than Rs. 90 Crores to aggrieved complainants. These complaints relate to claims as well as others falling within the ambit of Rule 12 (a) to (f).
- 3.3. The channel has helped reduce costs for the policyholder as well as the insurer when compared to the costs involved in approaching the civil court.
- 3.4. The Rules provide that the Ombudsman may conduct hearings in places under his/her jurisdiction other than where the office of the Ombudsman is actually located, which is a facilitating factor for the complainant.
- 3.5. The Rules provide for the mechanisms of Mediation as well as Award, where there is no agreement.
- 3.6. The system has been beneficial to complainants as it has resulted in quick redressal without having to go through legal hassles. It has also helped the insurers in preparing adequately in terms of documentation, for early disposal of cases.

4. Shortcomings of the system

- 4.1. While the practice today is that the Ombudsman considers only personal lines complaints, the object clause of the Rules does not indicate any such restrictive intention.
- 4.2. The geographical spread of the Ombudsmen, today, is inadequate to cover the entire country and the channel, therefore, is not easily accessible to policyholders in certain areas.
- 4.3. The Mediation mechanism is not utilized to its fullest extent. It is pertinent to note that the restriction of Rs. 20 lacs is applicable only in the case of Awards and not for Mediation. Further, the power of the Ombudsman as enshrined in Rule 12 (1) is quite comprehensive but there seems to be a narrow interpretation of the areas that an Ombudsman may receive and consider complaints on, as can be seen from practice.
- 4.4. The rule stipulating that the jurisdiction of an Ombudsman is based on the office of the insurer against whom the complaint is made could be inconvenient to the policyholder as his residence could be in some other State.
- 4.5. There is not enough awareness created about the institution of Insurance Ombudsman. This channel is not being used to its fullest extent.
- 4.6. There is no appellate mechanism present today.

5. Areas requiring modifications

5.1. Geographical jurisdiction:

In view of private insurance companies having centralized policy issuance, most complaints are being directed against the corporate offices of such companies, which are mostly located in Mumbai. So the Mumbai Ombudsman would be receiving most of the complaints whereas the Ombudsman in certain other areas may not have much of a workload (please refer **Annexure A** for data regarding this aspect, for the year 2009-10). Complaints should go to the Ombudsman under whose jurisdiction the residence of the insured (as captured in the proposal form) falls. Further, some jurisdictions cover lesser areas while others cover more. It is desirable to revisit this aspect in order to have a more equitable distribution. Ombudsman may be mandated to travel within the jurisdiction (as already provided for in the Rules) to hold more sittings to dispose of cases. The Ombudsmen should also hold hearings through video conferencing, wherever possible.

Recommendation: Complaints should go to the Ombudsman under whose jurisdiction the address for correspondence of the insured (as captured in the proposal form or updated in the insurer's records) falls. Ombudsmen shall hold more sittings to dispose of cases and shall hold hearings through video conferencing, wherever possible.

5.2. Number of Ombudsmen:

The number of Ombudsmen needs to be increased.

Recommendation: The number of Ombudsmen may be increased from the present number to at least one Ombudsman in each Class 1 city (A Class 1 city is one with a population of 1 million and above as defined in the most recent Census).

5.3. Nature of complaints:

The categories of complaints that an Ombudsman may entertain are currently defined in Rule 12(b) to 12(f). Rules may be suitably amended to authorize the Ombudsman to entertain complaints including policy sales and servicing. This will also require strengthening of the office of the Ombudsman, appropriately. The provision that the complainant needs to first exhaust the grievance channel of the insurance company would need to continue for all cases including policy sales and servicing.

Currently, only "personal lines" complaints are being entertained. Apparently, this is being followed as per instructions of the GBIC whereas the Rules do not have any such provision. Even in the interpretation of "personal lines", practices differ from Ombudsman to Ombudsman. Certain Ombudsmen interpret the Rules to entertain applications from sole proprietors and partnership firms as well whereas others do not.

Recommendation: Ombudsmen shall not restrict complaints entertained by them to personal lines but shall receive and consider complaints relating to business line insurance taken by individuals running small businesses (such as proprietary concerns etc) to earn their livelihood through self-employment. Ombudsmen shall also receive and consider complaints made by individuals covered under group policies.

5.4. The value upto which the Ombudsman may receive complaints relating to claims needs to be increased from the current Rs.20 lacs.

Recommendation: Ombudsmen shall receive and consider complaints upto Rs.50 lacs.

5.5. Handling of grievances received by IRDA:

As the Rules already provide that the Ombudsman can receive and consider complaints other than as specifically provided for in Rule 13 (1) and (2), the Ombudsmen should, in terms of the enabling Rule 14, agree to accept *suo moto* transfer of complaints received by IRDA and dispose them of either through the mechanism of Mediation (with the consent of both the parties—the complainant and the insurer) or Award. The feedback regarding the regulatory violation will be given to IRDA, which will then step in to deal with the Regulatory issues and take suitable action, wherever required.

Recommendation: Complaints received by IRDA shall be transferred to Ombudsmen who shall dispose them of through the mechanism of Mediation (only if requested for by both parties - complainant as well as insurer) or Award. The Ombudsman shall serve a notice along with the copy of complaint, to the insurer, addressing the designated Grievance Redressal Officer at its corporate office and the concerned branch or other servicing office.

IRDA will step in where regulatory action is warranted.

Even in respect of cases that go directly to the Ombudsman, IRDA shall take regulatory action where required.

5.6. Complaints to be excluded:

As the types of complaints that may be entertained has been expanded to make it all inclusive, it is necessary to list out the complaints that need to be excluded from the scope of what an Ombudsman may entertain.

Recommendation: The following types of complaints may be excluded:

(i). Complaints that are employee related.

(ii). Agency/Broker related matters in so far as they do not relate to the policyholder (such as remuneration payable by insurers etc).

(iii). Complaints questioning the structure/design/terms and conditions of the policy where the policy issued is cleared/approved by IRDA. However, the Ombudsman may receive and consider complaints where the insurer violates the File and Use procedure.

7. Disposal by Ombudsman:

7.1. Award of the Ombudsman has to be conclusive and unambiguous leaving no scope for subjective interpretation by the insurer necessitating any further review or reopening of the case in any forum.

7.2. The Mediation mechanism must continue.

7.3. Costs need to be reimbursed where the decision is in favour of policyholder. The reimbursement shall be made by the insurance company.

Recommendation: Cost upto Rs.10,000 may be paid to the complainant.

7.4. The time-frame for disposal may be revisited.

Recommendation: It would be better to bifurcate complaints as "Claims related" and "Others". While "Claims" may be given 90 days, "Others" may be given 60 days from the date of receipt of the complaint in writing.

7.5. In so far as other regulated entities are concerned, the insurer shall be responsible for taking action against them. Where regulatory action is warranted, the Ombudsman shall bring such instances to the notice of the Regulator. This would be for all cases and not just where cases are transferred by IRDA *suo moto*. In respect of all cases where Regulatory action is required, the Ombudsman will keep IRDA informed, so that necessary corrective action may be taken. Ombudsman shall also inform the insurance company where corrective action is involved.

5.7.6. Ex-gratia payments:

Since the term 'ex-gratia' can only apply to a payment by the insurer of its own free will, it is not within the purview of the Insurance Ombudsman.

Recommendation: An Ombudsman cannot be authorised to "award" ex-gratia. However, we reaffirm that the Insurance Ombudsman may, based on the merits of the case, award an amount even where liability is not clearly established and he or she feels that the benefit of doubt needs to be given to the complainant

8. Strengthening of the offices of Ombudsman:

There is an urgent need to strengthen the offices of the Ombudsmen, especially in view of the widening of the jurisdiction of the Ombudsman as recommended herein. Insurers shall be advised to depute more personnel to the various Ombudsman offices to strengthen them.

Recommendation: There is a need to strengthen the infrastructure, administration as well as introduce better procedures for collection of the funding provided by Insurers.

Familiarisation programme:

A familiarization programme on insurance, both life and general, has to be arranged for new Ombudsmen. Interaction should be arranged with ex-Ombudsmen as well, as part of the familiarization programme.

Recommendation: A familiarization programme on life insurance and general insurance, for newly appointed Insurance Ombudsman, could be conducted by National Insurance Academy.

5.9. 1. Supervision of the institution of Ombudsman:

The Committee felt the necessity of having a re-look at the role and need of GBIC in the present context when IRDA has set up a dedicated Consumer Affairs Department and decided to have a closer link with Ombudsman Centres. The selection of Ombudsman in a structured manner by IRDA also reflects on the increased involvement of IRDA in ensuring that the mechanism is able to function smoothly. A critical analysis of the functioning of GBIC reveals that much needs to be done to make the GBIC an effective SRO.

Recommendation: The Committee is of the view that the Ombudsman centres need to work under the aegis of IRDA, at least for a period of 5 years from now, after which a review may be carried out.

5.10. Advisory Committee:

The Advisory Committee provided for in the Rules should actively aid the IRDA in assessing the performance of the entire mechanism and provide the required feedback.

Recommendation: At least one third of the members of the Advisory Committee should represent the insured.

5.11. Regulations replacing Rules:

The RPG Rules were formulated by the Central Govt in 1998. In view of IRDA being set up subsequently, it might be appropriate to consider bringing out Regulations to replace the Rules.

Recommendation: IRDA may initiate discussions with the Ministry for repealing the Rules and then replace them with Regulations.

5.12. Leveraging technology:

The complaint management system of the Ombudsman should be IT driven and provide for integration with the proposed Integrated Grievance Management System (IGMS) of IRDA. It should provide for capture and generation of the necessary data. The statistical information currently produced is not sufficient.

Recommendation: Introduce an IT driven system that needs to be integrated with the proposed Integrated Grievance Management System of IRDA.

5.13. Creating awareness:

Awards and recommendations of Ombudsman should be put in the public domain (IRDA website).

IRDA should work on consumer education to create awareness about the institution of Ombudsman.

Recommendation: IRDA should augment efforts to create awareness about the institution of the Insurance Ombudsman.

5.14. Need for appellate mechanism for insurers:

Section 16(6) provides for compliance of the award of the Ombudsman, which means that the insurer has no option but to accept the award of the Ombudsman. While most of the awards have been honored by the insurers, there may be instances where the insurers may like to appeal the award of the Ombudsman. With a view to providing for such appeals, it is suggested that a review committee be formed. The decision given by the Committee will be final. The Review Committee will be the appellate mechanism for the insurers. The Committee would consist of any three Ombudsman, to be nominated by IRDA, excluding the ombudsman who has determined the award.

Recommendation: Provide for an appellate mechanism for insurers by setting up a Review Committee consisting of three Ombudsmen, excluding the ombudsman who has determined the award . The Review Committee will be the appellate mechanism for the insurers as well as complainants wherein the value of the total award (i.e., the insured amount and interest and compensation) is above Rs. 3 lakhs.

5.15. Selection of Ombudsmen:

Recommendation: Insurance being a highly specialized field, it is recommended that Ombudsmen should be drawn from a pool of suitably qualified and experienced individuals. At least 10 years of experience in the insurance industry or in judicial/quasi judicial roles is required. After induction, Ombudsman should be able to consult experts, for which it is recommended that IRDA creates a Centre of Excellence by having a pool of experts who may be consulted by the Ombudsmen whenever required. At present a significant reason for delay in addressing policyholder complaints is the late filling of vacancies in Ombudsman offices. IRDA shall make all attempts to ensure that Ombudsman offices are continuously occupied.

5.16. Advisory Committee:

The Advisory Committee as provided for in the Rules should be set up and actively aid IRDA in reviewing the functioning of Ombudsmen and advice IRDA appropriately. It needs to work actively keeping in view the interests of policyholders.

Recommendation: At least one third of the Committee members shall represent the interests of the insured.

6. Summary of Recommendations

- 6.1. Complaints should go to the Ombudsman under whose jurisdiction the address for correspondence of the insured (as captured in the proposal form or updated in the insurer's records) falls. Ombudsmen shall hold more sittings to dispose of cases and shall hold hearings through video conferencing, wherever possible.
- 6.2. The number of Ombudsmen may be increased from the present number to at least one Ombudsman in each Class 1 cities (A Class 1 city is one with a population of 1 million and above as defined in the most recent Census).
- 6.3. Ombudsmen shall not restrict complaints entertained by them to personal lines but shall receive and consider complaints relating to business line insurance taken by individuals running small businesses (such as proprietary concerns etc) to earn their livelihood through self-employment. Ombudsmen shall also receive and consider complaints made by individuals covered under group policies.
- 6.4. Ombudsmen shall receive and consider complaints upto Rs.50 lacs.
- 6.5. Complaints received by IRDA shall be transferred to Ombudsmen who shall dispose them of through the mechanism of Mediation (only if requested for by both parties – complainant as well as insurer) or Award.
 - 6.5.1. An Ombudsman cannot be authorised to “award” ex-gratia. However, we reaffirm that the Insurance Ombudsman may, based on the merits of the case, award an amount even where liability is not clearly established and he or she feels that the benefit of doubt needs to be given to the complainant.

6.5.2. The Ombudsman shall serve a notice along with the copy of complaint, to the insurer, addressing the designated Grievance Redressal Officer at its corporate office and the concerned branch or other servicing office.

6.5.3. IRDA will step in where regulatory action is warranted.

6.5.4. Even in respect of cases that go directly to the Ombudsman, IRDA shall take regulatory action where required.

6.5.5. Provide for an appellate mechanism for insurers by setting up a Review Committee consisting of three Ombudsmen.

6.6. The following types of complaints may be excluded:

(i). Complaints that are employee related.

(ii). Agency/Broker related matters in so far as they do not relate to the policyholder (such as remuneration payable by insurers etc).

(iii). Complaints questioning the structure/design/terms and conditions of the policy where the policy issued is cleared/approved by IRDA. However, the Ombudsman may receive and consider complaints where the insurer violates the File and Use procedure.

6.7. Cost upto Rs.10,000 may be paid to the complainant where the decision is in favour of the policyholder. For ease of administration, such costs may be based on the Ombudsman's reasonable judgment/estimate of expenses incurred by the policyholder towards seeking redressal.

6.8. It is recommended that complaints be bifurcated as "Claims related" and "Others". While "Claims" may be given 90 days, "Others" may be given 60 days from the date of receipt of the complaint in writing.

6.9. Section 16(6) provides for compliance of the award of the Ombudsman, which means that the insurer has no option but to accept the award of the Ombudsman. While most of the awards have been honored by the insurers, there may be instances where the insurers and complainants may like to appeal the award of the ombudsman on certain grounds, especially where the value of the award is considerable.. With a view to providing for such appeals, it is suggested that a review committee be formed. The decision given by the Committee will be final. The Review Committee will be the appellate mechanism for the insurers as well as complainants wherein the value of the total award (i.e., the insured amount and interest and compensation) is **above Rs. 3 lakhs**. The Committee would consist of any three Ombudsman, to be nominated by IRDA, excluding the ombudsman who has determined the award .

6.9.1. There is a need to strengthen the infrastructure, administration as well as introduce better procedures for collection of the funding provided by Insurers.

6.10. A familiarization programme on life insurance and general insurance, for newly appointed Insurance Ombudsman, could be conducted by National Insurance Academy.

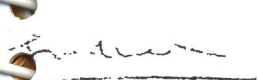
6.11. The Committee recommends that the Ombudsman centres need to work under the aegis of IRDA, at least for a period of 5 years from now, after which a review may be carried out.

6.12. At least one third of the members of the Advisory Committee should represent the insured.

13. The complaints management system of Ombudsman needs to be automated and integrated with the proposed Integrated Grievance Management System (IGMS) of IRDA. The summary tables company-wise should be published on the IRDA website.

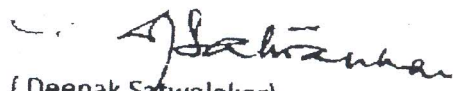
14. IRDA shall work to create more awareness about the institution of Ombudsman. IRDA (CAD) shall also place in the public domain, the Awards given by Ombudsmen.

15. Regulations by IRDA may replace the RPG Rules. IRDA may initiate a dialogue with the Government in this regard.

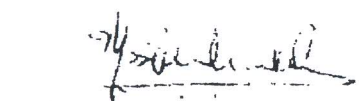

K. Sridhar)
Chairman

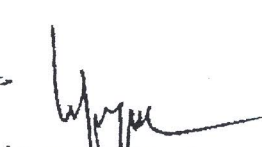

(Vijay Mahajan)
Member

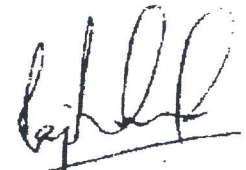

(Pushpa Girimaji)
Member

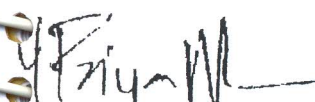

(Deepak Satwalekar)
Member


V. Ramadoss)
Member


(Venkatesh S. Mysore)
Member


(Kamesh Goyal)
Member


(Rajesh Sud)
Member


(Meghna Priya Bharath)
Member - Secretary

OFFICE OF THE GOVERNING BODY OF INSURANCE COUNCIL

Complaints Disposal upto the month March 2010
(From 01.04.2009 to 31.03.2010)

(LIFE & GENERAL COMBINED)

STATEMENT A

Name of Centre	Total No of Complaints			Disposal by way of				Durationwise disposal of Complaints				Durationwise Outstanding complaints				
	O/s at the Beginning of the year	Recd. from 01.04.09 to 31.03.2010.	Total	Recomen- dations/ Awards	Withdrawal /Settlement	Dismissal	NE	Total Disposed	Within 3 months	3 months to 1 year	Above 1 Year	Total Disposed	Within 3 months	3 months to 1 year	Above 1 Year	Total outstanding
Ahmedabad	37	1133	1170	297	52	192	578	1119	1115	4	0	1119	51	0	0	51
Bhopal	88	515	603	98	48	62	318	526	491	35	0	526	66	11	0	77
Bubaneswar	162	329	491	269	15	77	71	432	171	254	7	432	58	1	0	59
Chandigarh	296	1918	2214	703	425	304	149	1581	1438	142	1	1581	474	159	0	633
Chennai	33	1660	1693	118	51	93	1412	1674	1576	98	0	1674	17	2	0	19
Delhi	237	2521	2758	258	23	65	1873	2219	1859	360	0	2219	256	283	0	539
Guwahati	55	549	604	344	2	5	225	576	546	30	0	576	27	1	0	28
Hyderabad	35	1238	1273	132	50	59	982	1223	1223	0	0	1223	50	0	0	50
Kochi	78	839	917	109	50	193	468	820	779	41	0	820	97	0	0	97
Kolkata	185	1794	1979	185	87	121	1176	1569	1226	260	83	1569	169	241	0	410
Lucknow	0	1229	1229	157	148	101	823	1229	1183	46	0	1229	0	0	0	0
Mumbai	189	2339	2528	486	0	0	1736	2222	1839	383	0	2222	222	84	0	306
TOTAL	1395	16064	17459	3156	951	1272	9811	15190	13446	1653	91	15190	1487	782	0	2269